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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,366	01/12/2006	Andre F. Lhote	6222.480	9213
28410	7590	10/27/2009		
BERENATO & WHITE, LLC 6550 ROCK SPRING DRIVE SUITE 240 BETHESDA, MD 20817			EXAMINER VO, HIEU T	
			ART UNIT 3747	PAPER NUMBER
			MAIL DATE 10/27/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,366	<b>Applicant(s)</b> LHOTE ET AL.	
	<b>Examiner</b> HIEU T. VO	<b>Art Unit</b> 3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-14, 16-30, 34-36, 38-52, 56-58 and 60-66 is/are rejected.
- 7) ☒ Claim(s) 9-11, 15, 31-33, 37, 53-55 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/10/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Inventorship**

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 10 July 2006 has been acknowledged and placed in the file. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 12-14, 16-30, 34-36, 38-52, 56-58, and 60-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Kinerson et al. (US Pat. No. 6, 179, 096 B1).

The patent '096 to Kinerson et al. discloses an exhaust brake for an internal combustion engine comprising a body (110) having a passageway (112) for exhaust gas flow therein; a valve (130) located within the passageway (112) for selective movement between open/closed position wherein the exhaust gas are free to move through. The valve (130) has an aperture (216) to permit a limited flow of exhaust gas through the aperture (216) when the aperture (216) is open (see Figures 4-6); an exhaust valve actuator mechanism, as shown in Fig. 6, coupled to the valve member for moving the valve member between open and closed position; a closure member (222) positioned adjacent to the aperture (216) in which the closure member (222) having an open position to permit a flow of exhaust gases through the aperture (216), and the closure member having a closed position to inhibit a flow of exhaust gases through the aperture (216); and a relief actuator mechanism including an actuator member (244) which operatively engages the closure member, the relief mechanism bringing the closure member into operative engagement with the valve member with sufficient force, when the valve member is closed, to maintain the closure in the closed position when the exhaust gases are below a predetermined pressure. The actuator member is pivotally biased against the closure member by means of spring member (226) in conjunction with an optional control system.

***Allowable Subject Matter***

4. Claims 9-11, 15, 31-33, 37, 53-55, and 59 are objected to as being dependent upon a rejected base claim, but would be allowable subject matter if rewritten in

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independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited in the form PTO-892 are being state of the art.

### **Contact Information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEU T. VO whose telephone number is (571)272-4854. The examiner can normally be reached on M-Thurs., Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, STEPHEN K. CRONIN can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HIEU T VO/  
Primary Examiner, Art Unit 3747

/HV/  
October 24, 2009